IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 823 of 1995

For Approval and Signature:

HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMIBEN MULABHAI HARIJAN

Versus

ASSISTANT COLLECTOR

Appearance:

1. Special Civil Application No. 823 of 1995

MS MEGHA JANI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 15/04/2005

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner challenges the order dated 26th March 1994 passed by the Assistant

Collector, Rajula in Sharat Bhang Case No.39/93.

2. The facts of the case, as briefly stated, are that, by an order dated 14th June, 1968, the land bearing Survey No.117 part of village Jamka, Taluka Rajula, Dist. Amreli, admeasuring 8 acres were granted on new and impartible tenure to one Deva Karman, resident of Jamka, Taluka Rajula, Dist. Amreli. Accordingly, an entry was made in the revenue record being mutation entry No.443. By a sale deed dated 5th January, 1982, the petitioner purchased the said land from Deva Karman for a sum of Rs.10,000/-. The said transaction was entered in the revenue record by way of a mutation entry being M.E. No.829, on 10th February, 1982. The said mutation entry was certified on 13th March 1982.

3. It was noticed by the revenue authorities that there was breach of condition of tenure and accordingly, on 13th June, 1993, the Mamlatdar, Rajula forwarded a proposal for initiating proceedings in respect of the breach. Pursuant to the said proposal, a case was registered and proceedings were initiated by issuance of a show cause notice whereby hearing was fixed on 26th March 1994. The original land owner, Shri Deva Karman had expired and his representatives had also not remained present on the date of hearing. The petitioner had remained present and had submitted a written reply stating that the village form No.7/12 did not mention that the said lands were new tenure lands, hence the petitioner had entered into the sale deed. It was stated that if any amount was required to be paid, the petitioner was ready and willing to pay the said amount and it was requested that the transaction of sale be recognized.

4. The aforesaid proceedings culminated into the passing of the impugned order dated 26th March 1994, whereby the Assistant Collector, Rajula dropped the proceedings in respect of the notice after issuance of a warning and directed the opponents in the said proceedings, namely, Deva Karman and the petitioner, to obtain permission for sale within a period of one month, failing which, the land would be restored to its original position.

5. Being aggrieved by the aforesaid order passed by the Assistant Collector, the petitioner has approached this Court by way of the present petition.

6. By an order dated 7th February, 1995, the petition was admitted and interim relief was granted

directing the respondents not to disturb the possession of the petitioner of the land bearing Survey No.117 of village Jamka, Taluka Rajula, Dist. Amreli, admeasuring 8 acres.

7. Ms.Megha Jani, the learned advocate appearing on behalf of the petitioner, submitted that the sale deed was executed on 5th January 1982 and accordingly, a mutation entry had been made in the revenue record on 10th February 1982. That, the proceedings in respect of breach of conditions had been initiated after 13th January 1993 i.e. after a delay of more than 11 years since the execution of the said sale deed. Hence, in view of the settled legal position enunciated by the Hon'ble Supreme Court in a catena of decisions, the proceedings were hopelessly time-barred, hence the same should be quashed and set aside. The decision of the Supreme Court in case of Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim, reported in 1997(6) SCC 71 was cited for the proposition that whenever a power is vested in a statutory authority without prescribing any time limit, such power should be exercised within a reasonable time. It was submitted that even a delay of one year in initiation of proceedings has been held to be a considerable delay and in the facts of the present case, where the delay is for a period of more than 10 years, the proceedings are hopelessly time-barred.

8. None appears on behalf of respondents. However, an affidavit in reply has been filed by the Deputy Collector, Rajula. Upon going through the affidavit in reply, it is found that the delay in initiation of proceedings for breach of condition has not been explained. The petitioner has raised a specific contention in paragraph No.4.2 of the petition that the respondents cannot raise the contention that the sale is bad in law after approving of it for 12 years, due to the bar of acquiescence, delay and laches. However, the said contention has not been dealt with in the affidavit in reply.

9. Upon perusal of the impugned order, it is evident that the proceedings have been initiated after a period of more than 10 years. No explanation for the said delay has been recorded in the impugned order. Moreover, the affidavit in reply made by the Deputy Collector, Rajula is also silent as regards the delay caused in initiation of proceedings. In the circumstances, in view of the settled legal position, the impugned order cannot be sustained. Since the impugned order can be set aside on the ground that the proceedings for breach of condition

have not been initiated within reasonable time, it is not necessary to enter into the merits of the controversy involved in the impugned order.

10. Accordingly, the impugned order dated 26th March 1994 passed by the Assistant Collector, Rajula is held to be bad as being time-barred and the same is accordingly quashed and set aside. The petition is allowed. Rule is made absolute with no order as to costs.

[H.N.DEVANI, J.]

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